

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE CHABIAA,

Plaintiff-Appellant,

v

KAROULIN ALJORIS CHABIAA,

Defendant-Appellee.

UNPUBLISHED

September 18, 2008

No. 279419

Macomb Circuit Court

LC No. 2006-001962-DO

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff George Chabiaa appeals as of right from the judgment of divorce that was entered pursuant to an arbitration award. We affirm.

I. Basic Facts And Procedural History

George Chabiaa and defendant Karoulin Chabiaa were married in March 2003. George Chabiaa filed a complaint for divorce in March 2006. The divorce proceedings were acrimonious. Both George Chabiaa and Karoulin Chabiaa accused the other of hiding assets. Among other things, each party claimed the other has real property and business interests in Syria that were not disclosed. George Chabiaa filed several motions regarding Karoulin Chabiaa's failure to produce the documentation he requested concerning her Syrian assets.

In April 2007, the parties agreed to binding arbitration regarding division of marital property, spousal support, and payment of litigation costs and attorney fees. Paragraph 9 of the arbitration agreement provides, "Each party shall exchange and deliver to the arbitrator[s] a summary and proposal, a witness list, and other requested financial disclosures at least three business days prior to the arbitration." A stipulation and order regarding the agreement to arbitrate was entered on April 4, 2007. The same day, the arbitrator sent identical letters to counsel for the parties. The letters stated that the arbitration hearing was scheduled for May 17, 2007. The letters further stated, "No adjournments by stipulation or otherwise will be granted by the Referee. Requests for adjournments must be submitted to and approved by the Judge assigned to the case no later than three weeks prior to the [arbitration] date."

The arbitration hearing took place as scheduled, and in his introductory statement, the arbitrator stated,

[C]ounsel submitted extensive summaries. Plaintiff's arbitration summary is twelve pages single-spaced and approximately, oh, an inch, inch and a quarter worth of exhibits running from A through I. Very extensive. I have reviewed that entire packet as well as Defendant's ten page arbitration summary and there were some exhibits. I examined all of that yesterday afternoon[;] actually after I had completed my, my other work in the morning I spent most of the afternoon reviewing this case to be prepared when parties and counsel appeared this morning.

Following the arbitrator's introductory statement, the transcript contains the following passage:

REFEREE: Okay. I'd like counsel to indicate whether what I've stated on the record to this point is accurate.

MS. GARIAN: Yes it is.

MR. LINDEN: Yes it is.

Later that day, after the arbitrator had issued his award, the arbitrator and the parties went on the record before the trial court. Before presenting his findings to the trial court, the arbitrator stated, "I conducted a pre-arbitration conference initially with counsel this morning, having reviewed in detail both summaries and all attachments yesterday afternoon." Neither plaintiff nor plaintiff's counsel raised any objection to this statement.

At the hearing on plaintiff's motion to set aside the arbitration award, counsel for plaintiff complained that the arbitrator had stated that he had not read the entire arbitration summary. However, when the trial court inquired whether counsel brought the issue to the arbitrator's attention at the time, counsel acknowledged he had not.

After taking testimony from the parties, the trial court found there had been a breakdown in the marital relationship to the extent that the objects of matrimony were destroyed and there was no reasonable chance of preserving the marriage. The trial court then instructed the parties to present a judgment of divorce reflecting the arbitrator's rulings within 21 days.

In June 2007, Karoulin Chabias moved to enter the judgment of divorce. George Chabias filed a response opposing entry of the judgment and a motion to set aside the arbitration award and proceed to trial. In his motion, George Chabias claimed that on the morning of May 17, 2007, he had asked the arbitrator if he had read the arbitration summary and review the exhibits, and the arbitrator replied, "Some of it." George Chabias further asserted that the arbitrator's confusion about the facts of the case was illustrated by the fact that he was unaware that George Chabias does not own the marital home.

Following the arguments on the motions, the trial court denied George Chabias's motion to set aside the arbitration award and granted Karoulin Chabias's motion for entry of the judgment of divorce. George Chabias moved for reconsideration of the denial of his motion to set aside the arbitration award. George Chabias attached his own affidavit and the affidavit of Stephen Linden, his attorney, in support of the motion. In July 2007, the trial court denied

George Chabiaa's motion for reconsideration on the basis that it merely presented the same issues previously ruled upon by the court. George Chabiaa now appeals.

II. Arbitrator's Statements Regarding Review Of Evidence

George Chabiaa asserts the arbitrator violated MCL 600.5081 by lying under oath on the record when he falsely stated that he had reviewed the parties' submissions. George Chabiaa claims that on the morning of the arbitration hearing, the arbitrator stated he had not reviewed the entirety of the parties' arbitration summaries. However, later that day, the arbitrator twice stated on the record that he had reviewed the parties' submissions. George Chabiaa did not object to the arbitrator's statements either time. In fact, on one of these occasions, George Chabiaa's counsel acknowledged the accuracy of the arbitrator's introductory statement. Because George Chabiaa failed to timely object to the arbitrator's statements during the arbitration hearing and in the trial court, and in fact acquiesced to those statements, this issue is not preserved for appellate review.¹ A party may not harbor error, to which he has contributed by design or negligence, as an appellate parachute.²

Even if this issue were preserved, we find that the trial court did not err in concluding that, on the record before it, there was insufficient evidence that the arbitrator lied when he stated he had reviewed all of the materials submitted by the parties. Given the arbitrator's repeated statements on the record that he had reviewed the parties' submissions, George Chabiaa's failure to object to these statements, and counsel's explicit acceptance of the accuracy of one of those statements, George Chabiaa's untimely assertion that the arbitrator had previously made a contrary statement does not establish that the arbitrator lied.

III. Arbitrator's Consideration Of The Evidence

George Chabiaa's claim that the arbitrator refused to hear, read, and consider evidence material to the parties' dispute is similarly not preserved because George Chabiaa failed to timely raise it at the trial court level. In any case, as already discussed, the record does not support George Chabiaa's claim that the arbitrator did not review the materials submitted by the parties. Moreover, an award may be vacated pursuant to MCL 600.5081(2)(d) when the arbitrator "refused to hear evidence material to the controversy." However, George Chabiaa has not identified any specific evidence the arbitrator allegedly failed to review. Furthermore, the transcript of the arbitration award reveals that the arbitrator repeatedly asked the parties if there was any other information they wanted to present. Accordingly, the record does not support a finding that the arbitrator refused to hear evidence material to the controversy.

IV. MCL 600.5076

George Chabiaa complains that the arbitrator violated MCL 600.5076 by failing to hold a prehearing meeting to discuss the presentation of witnesses. However, in his introductory

¹ See *LME v ARS*, 261 Mich App 273, 285; 680 NW2d 902 (2004).

² *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005).

statement, the arbitrator specifically stated that he had conducted the pre-arbitration conference with counsel immediately before the commencement of the hearing. Because the record explicitly contradicts George Chabiaa's claim, we find no error.

V. Prevention Of Witnesses

George Chabiaa asserts the arbitrator prevented him from presenting witnesses by insisting that the hearing be held on May 17, 2007. However, the record discloses that George Chabiaa was notified in early April that the arbitration hearing was scheduled for May 17, 2007, and that all requests for adjournments had to be submitted to and approved by the trial court at least three weeks prior to the arbitration date. Under the circumstances, the record does not indicate that the arbitrator wrongfully refused to hear the testimony of George Chabiaa's witnesses. Rather, George Chabiaa did not take the steps necessary to either produce his witnesses at the hearing or obtain an adjournment from the trial court. Vacation of the arbitration award is not required on this basis.

VI. Instructions To Parties

George Chabiaa complains that the arbitrator never provided with the parties with any instructions regarding when and how they should present their witnesses. However, the procedure for subpoenaing witnesses is set forth in MCR 2.506. There is nothing in the arbitration agreement requiring the arbitrator to explain this procedure to the parties or their counsel.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio